

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 1599.00
COMPLAINT INVESTIGATOR: Jane Taylor-Holmes
DATE OF COMPLAINT: July 13, 2000
DATE OF REPORT: August 11, 2000
REQUEST FOR RECONSIDERATION: yes (revisions to original report are underscored)
DATE OF CLOSURE: November 3, 2000

COMPLAINT ISSUES:

Whether the Valparaiso Community Schools and the Porter County Education Interlocal violated:

511 IAC 7-27-3(a) with regard to the school's alleged failure to include in the June 21, 2000 case conference committee (the "CCC") meeting the student's current teacher of record and one of the student's general education teachers;

511 IAC 7-27-2(d) with regard to the school's alleged failure to address the issues at the June 21, 2000 CCC as identified on the notice of the CCC meeting;

511 IAC 7-27-4(c) and 511 IAC 7-27-6(a)(2) with regard to the school's alleged failure to utilize the CCC to determine annual goals, benchmarks, and short-term objectives to be included in the student's *individualized education program* (the "IEP");

34 CFR 300.347(a)(7) with regard to the school's alleged failure to include in any of the student's IEPs for the 1999-2000 school year a statement about:

- a. how the student's progress would be measured and
- b. how the student's parents would be regularly notified of the progress and whether the progress was sufficient for the student to achieve the identified goal.

511 IAC 7-27-9(b) with regard to the school's alleged failure to make available to a student with a disability the variety of educational programs and services that are made available to a nondisabled student, specifically, driver's education; and

511 IAC 7-30-1(g) with regard to the school's alleged requirement that any agreement reached in mediation between the school and the parent must be approved by the local school board before such agreement may be implemented.

FINDINGS OF FACT:

1. The student (the "Student") is 16 years old and is eligible for special education and related services as a student with an other health impairment ("OHI") and an emotional handicap ("EH"). The Student completed the 1999-2000 school year at an alternative school.
2. Prior to March 9, 1999, the Student attended the local high school (the "High School") and received special education and related services in a self-contained multi-categorical classroom. The Student participated in general education classes for choir and physical education.

3. The Student's teacher of record during the 1999-2000 school year was no longer employed by the local school corporation as of June 8, 2000. The case conference committee (the "CCC") met on June 21, 2000, and re-convened on July 12, 2000. A teacher licensed in the area of EH participated as the Student's teacher of record at the June 21, 2000 meeting. Another teacher licensed in the area of EH participated as the Student's teacher of record when the CCC reconvened on July 12, 2000.
4. Although there was a general education teacher at the Student's June 8, 1999 annual case review (the "ACR"), there was no general education teacher at the June 21, 2000 CCC meeting, or when the CCC reconvened on July 12, 2000.
5. Page 12 of the *CCC Report* from the June 21, 2000 CCC meeting states that the Student would like to go to the local high school (the "High School") full-time.
6. The local director of special education wrote the following in his written response regarding the Student's placement for the 2000-01 school year. "Given that the parents have continued to express a strong desire for [Student] to return to [High School]..." The Director also wrote, "... the placement decision for [Student's] 2000-01 case conference was deferred until August 2000." Although the parent disagrees with the Director's statements, the CCC Report/IEP dated June 21 and amended on July 12, 2000 states "[the Student's] educational setting will be determined for the fall semester at a Case Conference to be held on 8/17 or 8/18/2000." On June 28, the parents submitted a 'Parent's Amendment to IEP.' The 'Amendments' do not indicate that the parents took exception to the decision to delay the placement decision until the August CCC, although they objected to delaying the development of a plan to transition the Student back to the local high school. The Student's parent signed the June 21 IEP, indicating agreement 'with changes as in Amendment [pages],' on June 30, 2000. The July 12 IEP includes the parents' amendments and their June 28 letter. The parent signed agreement with the amended IEP on July 12, 2000.
7. The Student's CCC meeting was originally scheduled for June 7, 2000. The first *Case Conference Notification* (the "Notice") was dated May 31, 2000, with a second Notice dated June 5, 2000. The Notice has the following reasons checked as to the purpose of the meeting: an *IEP* review, an annual case review, a case conference, and to discuss transition to adult life.
8. Another Notice was completed indicating that the CCC meeting was rescheduled for June 21, 2000. The first Notice for the rescheduled CCC meeting was dated June 9, 2000. The second Notice was dated June 13, 2000. The Notice has the following reasons checked as to the purpose of the meeting: an *IEP* review, an annual case review, a case conference, and to discuss transition to adult life.
9. The *CCC Report* has annual case review and case conference checked as the reasons for the June 21, 2000 meeting.
10. The *CCC Report* indicates on pages two to ten that the Student's present levels of performance were discussed. The Student's *individualized transition plan* (the "*ITP*") was discussed, as indicated on pages 11 to 15 of the *CCC Report*. Page 12 indicates that the Student is interested in driver's training. Pages 16 to 23 include the CCC's review of the Student's educational needs and the functional assessment that was completed. The CCC then discussed extended school year services ("ESY"). Page 36 of the *CCC Report* states the need to keep the Student in the community for ESY and page 37B identifies that the Student will receive three hours per day of ESY until August 18. The Director reported that the discussion on ESY was lengthy and required that the CCC reconvene to conclude the proceedings on July 12, 2000. The *CCC Report* also indicates that the CCC determined that they would meet again on either August 17 or 18, 2000, to determine the Student's educational placement.

11. The Director reported that the Student's annual goals and benchmarks had been prepared by the Student's previous teacher of record, and were reviewed at the June 21, and July 12, 2000 CCC meetings. The parents' "Amendment" to the June 21 report, indicates that they had no input into the goals and benchmarks identified in the IEP. Further, in a letter to the interlocal supervisor subsequent to the June 21 and included in the amended IEP of July 12, the parents indicate that "the goals and benchmarks that were recorded in this IEP were never discussed at the [June 21] conference." The parent signed the IEP on June 30, 2000, noting the incorporation of the amendments to the CCC Report and IEP. The parent acknowledges that the goals and benchmarks were reviewed at the July 12 CCC meeting.
12. Although page 10 of the CCC Report states that the parents would like narrative reports included with quarterly benchmarks progress, the IEP form includes an area to be completed with dates for reporting progress of annual goals and benchmarks. No dates were entered into this area. The following is typed on the IEP form. "Monitoring of Progress will occur throughout the school year in conjunction with school district reporting cycle (report cards)."
13. The Student's IEP from the 1999-2000 school year was written on the same IEP form used at the Student's June 21, 2000, and July 12, 2000 CCC meetings. (Finding of Fact #12)
14. The IEP form has subsequently been revised, along with staff notification of the reporting process, as a result of the interlocal's involvement in complaints #1589.00, #1585.00, and #1593.00, regarding the issue of reporting student progress.
15. The Director reported that the driver's education classes were already filled when the High School principal and the complainant talked about enrolling the Student in driver's education. Further, because the High School only offers driver's education in the summer, the principal explained how to sign up the Student for the 2001 summer driver's education classes. However, there is no documentation that this was discussed at either the June 21 or July 12 CCC, and the parent states this information has not been provided.
16. The Complainant and the local special education interlocal engaged in a mediation in July 1999. The Director reported that one of the issues brought to the mediation by the Complainant was the reimbursement of attorney's fees that the Complainant had incurred. The Director reported that the mediator informed the Complainant and the Complainant's counsel that reimbursement of attorney's fees was not an issue that could be mediated. The report from the mediator indicates that no mediation agreement was reached by the parties.
17. In a letter dated July 14, 1999, to the Complainant's counsel, the local special education interlocal's attorney (the "Interlocal's Attorney") stated, "After hours devoted to mediation and after the mediator made it quite explicit from his opening statement that fees could not be a part of items to be mediated, we are quite disappointed that having reached agreement on the merits mediation was ended because fees were not settled." The Interlocal's Attorney also stated, "Given the fact that any negotiations concerning reimbursement toward cost could not occur without Board review and approval..." A letter from the parents' attorney to the interlocal's attorney, dated July 15, 1999, disputes the interlocal's characterization of the situation.

CONCLUSIONS:

- 1.a. Findings of Fact #3 and #4 indicate that a teacher certified in EH attended the Student's CCC meetings on June 21, 2000, and July 12, 2000, and participated in the role of teacher of record. No violation of 511 IAC 7-27-3(a) occurred with respect to including a teacher of record.

- 1.b. Findings of Fact #5, #6, and #10 indicate that discussion occurred with regard to the Student returning to the High School, and that the CCC agreed to determine the Student's placement for the 2000-01 school year at an upcoming CCC meeting in mid-August. Because the Student may be participating in a general education environment during the 2000-01 school year, a violation of 511 IAC 7-27-3(a) occurred with regard to including a general education teacher in the Student's CCC meetings in June and July 2000.
2. Findings of Fact #7, #8, and #9 indicate that the Notice of the CCC meeting indicated more was to be discussed than checked on the CCC Report. However, Finding of Fact #10 indicates that the items listed on the Notice were discussed as they are reflected in the CCC Report. No violation of 511 IAC 7-27-2(d) occurred.
3. Findings of Fact #10 and #11 indicate that the goals and benchmarks were written prior to the Student's CCC meeting. However, the parents' written "Amendment" to the June 21 CCC Report and IEP indicate that the CCC did not discuss the goals and benchmarks. Although the school is permitted to prepare proposed goals and benchmarks prior to the CCC meeting, the CCC is responsible for developing, reviewing, and revising this component of the Student's IEP. Therefore, a violation of 511 IAC 7-27-4(c) and 511 IAC 7-27-6(a)(2) occurred. However, because the goals and benchmarks were reviewed when the CCC reconvened in July, no additional corrective action is required at this time.
4. Although Finding of Fact #14 indicates that the IEP form has been revised, Findings of Fact #12 and #13 indicate that no individual consideration was given by the CCC when determining and writing the Student's IEPs as to how the Student's progress would be measured, or how the parents would be regularly notified of the Student's progress. A violation of CFR 300.347(a)(7) occurred with respect to this Student.
5. Findings of Fact #10 and #15 indicate that the driver's education classes were already full at the time of the Student's CCC meetings. However, there is no documentation as to this discussion or that the Complainant was informed of how to enroll the Student for the program next summer. Therefore, a violation of 511 IAC 7-27-9(b) occurred.
6. Findings of Fact #16 and #17 indicate that there was no agreement with respect to the reimbursement of attorney's fees as the mediator informed the parties that it was not an issue to be mediated. Further, the Interlocal's Attorney did state that reimbursement for attorney's fees could not occur without board approval. However, there is contradictory information on whether the school indicated it could not finalize agreement on other mediated issues without approval of the school board. The Division finds no violation on the issue of not mediating the issue of attorney's fees. However, because mediation proceedings are supposed to remain confidential and because the parties have provided contradictory information on what allegedly occurred during the course of the mediation, the Division is unable to substantiate a violation of 511 IAC 7-30-1(g). However, it is expected that school personnel participating in a mediation generally have the authority to commit the agency's resources and resolve issues without seeking additional approval of school authorities.

The Department of Education, Division of Special Education requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The Valparaiso Community Schools and the Porter County Education Interlocal shall:

1. in accordance with corrective action #1 in complaint #1579.00, submit, no later than August 25, 2000, a statement assuring that all student CCC meetings will include a general education teacher if a student is, or may be, participating in the general education environment; and
2. reconvene the Student's CCC meeting no later than August 18, 2000, for the purpose of revising the Student's *IEP* to indicate how the Student's progress will be measured, and how the parents will be regularly notified of the Student's progress. Further, the CCC shall also determine the Student's placement for the 2000-01 school year. Additionally, because the Student may be participating in the general education environment, a general education teacher shall also participate in the CCC meeting. A copy of the Student's revised *IEP* and *CCC Report* must be submitted to the Division no later than September 11, 2000.
3. No later than September 22, 2000, the school shall provide the parent with written information regarding how to enroll the Student in driver's education in the summer of 2001. A copy of the letter along with documentation of receipt by the parent shall be submitted to the Division by October 6, 2000.